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By Fax and Express Mail

Mary Cottrell, Secretary
Commonwealth of Massachusetts
Department of Public Utilities
100 Cambridge Street, 12th Floor
Boston, Massachusetts 02202

RE: *Boston Gas Company*, D.P.U. 96-50
Reply Brief of The Marketer Group

Dear Ms. Cottrell:

The following letter constitutes the Reply Brief of Direct Energy Marketing, Inc., Eastern Energy Marketing, Inc., ERI Services, Inc., Keyspan Energy Services, Inc., PanEnergy Trading & Market Services, LLC, and Utilicorp United, Inc. (together, The Marketer Group) for filing with the Department of Public Utilities (Department) in the above-referenced case.[1] This letter is intended to highlight certain specific points made in our Initial Brief and the briefs of other parties; silence on any one issue raised in our Initial Brief or elsewhere should not be interpreted as acquiescence to counter views on that or any issue.[2]

As stated in our Initial Brief, The Marketer Group commends Boston Gas for an innovative proposal to exit the merchant function and provide unbundled services for the benefit of its customers. However, as fully set out in our Initial Brief, we remain opposed to Boston Gas' mandatory capacity assignment regime, including the assignment of Boston Gas' upstream Canadian supply obligations with certain pipeline capacity, because such a regime severely limits the ability of Suppliers to tailor services to meet customers' gas supply needs and, in turn, creates a significant risk that the entire restructuring program will prove uneconomic and unworkable in the first instance. We also address

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We have attached 15 copies of this document and a electronic copy on disk.

Although not addressed specifically herein, we renew our comments and suggested modifications regarding other topics discussed in our Initial Brief such as on-system capacity allocation and pricing, capacity forfeiture provisions, credit-worthiness requirements, single billing, supplier switching administrative fee, interim sales service rate, designated receipt points, monitoring and customer information and other operational issues and matters pertaining to interruptible service. We note that, in its initial brief, Boston Gas mainly addressed capacity and supply allocation, customer sign-up, receipt points, the DCQ calculation, and daily balancing and, thus, many of the issues in our Initial Brief remain unrefuted at this time.

below the issues of agency designation, unbundling program start dates, balancing charges, standards of conduct, and regulation of marketers, in response to statements made in various initial briefs.[3]

Mandatory Capacity and Canadian Supply Assignment

The Attorney General said it well: "The Department's greatest concern should be that as robust and active a market for gas supplies develops within Massachusetts so that the maximum competition presents itself to buyers behind the LDC's city gate." Initial Brief of the Attorney General at 91. The various participants in The Marketer Group are suppliers that will actually operate under Boston Gas' unbundling plan and use its services. As marketers providing services to customers throughout the country, our experience tells us that Boston Gas' mandatory assignment regime *does not represent true unbundling and will not result in a "robust and active" market or "maximum competition."* Instead, as stated by the Division of Energy Resources (DOER), such a mandatory regime would "limit the flexibility of marketers and aggregators to design customer portfolios needed to serve their specific pools of customers . . . " Exh. DOER-71, at 4; *see also*, Initial Brief of the Energy Consortium at 15. Such limitations do nothing more than inhibit the development of a competitive market to the ultimate detriment of the consumer. In addition to DOER's on-going statement in favor of a voluntary capacity release regime, we note that other parties such as Enron and TEC, do not support Boston Gas' proposal, again favoring a voluntary approach. A few parties remain silent or non-committal, relying on those entities, marketers and customers, that will actually use Boston Gas' unbundled services to provide experience and guidance on the appropriate system of capacity allocation to reach a competitive marketplace.

In its initial brief, Boston Gas essentially argues that a mandatory capacity and supply assignment regime creates a fair and equitable allocation system, helps deliverability and controls prices, and presents a means to manage stranded costs. Initial Brief of Boston Gas at 12-26. We addressed each of these assertions at length in our Initial Brief and remain unconvinced of the merits of Boston Gas' proposal.

Suffice it to say, there is little that is fair and equitable when a customer is saddled with portions of capacity it may not want but must take -- this has little resemblance to the provision of unbundled services. Moreover, shifting possibly unwanted portions of capacity to customers merely shifts any questions concerning how that capacity will be used; in fact, under Boston Gas' proposal customers are encouraged to attempt to find whatever value they can for unwanted capacity which has been forced upon them. Under a voluntary allocation method, deliverability will be maintained through the marketplace -- customers contract and pay for their gas and the capacity necessary for that gas to be delivered -- parties are bound and penalties will accrue if the marketer fails to deliver. Initially unwanted capacity will find value and use by other Boston Gas customers or in a broader marketplace. In terms of costs, by removing the ability of the marketer to bring its own capacity assets to bear and thus tailor and manage its services to meet specific customer or customer pool requirements, Boston Gas merely establishes a higher-cost and less-efficient system of capacity allocation -- costs and inefficiency likely passed on to converting customers. Finally, Boston gas touts its capacity assignment regime as the best method to manage stranded costs, with the marketer doing the managing and bearing that cost. As stated in detail in our Initial Brief, such stranded capacity costs are speculative at best and should be mitigated and verified before they become eligible to be passed on to customers. The ability of customers to choose their supplier and save money cannot be inhibited by a regime designed to recover speculative stranded costs.

Boston Gas also continues to maintain that the assignment of its expensive Canadian supply to marketers with certain capacity allocations is a good thing. It is not. Without repeating the comments made in our Initial Brief, it is patently unfair to push the high costs and restrictions of these supply contracts on certain customers simply because customers choose to enter the competitive marketplace;

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[3] Utilicorp, as a participant in The Marketer Group, renews its specific comments concerning Boston Gas' capacity allocation proposal as well as its standards of conduct made in The Marketer Group's Initial Brief, at fns. 6 and 10.

Boston Gas must first take the responsibility to mitigate its exposure from establishing these supply contracts. In its initial brief, Boston Gas dismisses out-of-hand keeping this supply to serve remaining sales customers and fails to discuss maintaining the Canadian supply to provide balancing or related peaking services or the possibility of bidding out the contracts to interested suppliers. Again, on paper and in action, Boston Gas has not fully considered or undertaken adequate, not to mention prudent, steps to mitigate this cost exposure and responsibility. The possibility of recovery of stranded costs, if any, must be delayed until Boston Gas has had direction from the Department and the opportunity to act in this regard.

The mandatory assignment of such Canadian supply is also ill-advised because it simply forces "cookie cutter" mirror images of a Boston Gas capacity and supply portfolio onto participating marketers who then, in turn, risk becoming mirror images of each other because each marketer "begin[s] with similar allocations" of capacity and supply. *See* Initial Brief of Boston Gas at 34. The purpose of unbundling and the introduction of competition into the natural gas market is to allow customers to seek out and choose less costly and/or more tailored supply and transportation services, not to bind them to Boston Gas' past planning and existing supply portfolio. *See*, Initial Brief of TEC at 16-17; Initial Brief of DOER at 61-86; *see generally*, Initial Brief of Imperial Oil.

Having said this, The Marketer Group renews its recommendation that Boston Gas adopt a voluntary upstream capacity release allocation method similar to that proposed by DOER and, at the very least, eliminate the constraining requirement that Customers converting to transportation be required to take a *pro rata* portion of Boston Gas' Canadian supply obligations.

Agency Designation and Streamlined Sign-up Methods

In its Initial Brief, Boston Gas states that it recognizes "a customer's right to designate a supplier to act as its agent" and that it is "amenable to streamlining the application process through the use of voice verification which allows the Customer to authorize the Company to deal directly with the supplier in the application process." Initial Brief of Boston Gas, at 37. As stated in our Initial Brief, we support this approach and applaud Boston Gas for its pledge to streamline the sign-up process. We refer the Department to The Marketer Group's Initial Brief, pages 24-30, on a detailed explanation and outline of how this process should work and what should be included in Boston Gas' compliance tariffs.

Standards of Conduct

In its Initial Brief, AllEnergy states that "there are no affiliate issues that need to be decided in this case." Initial Brief of AllEnergy at 2. Of course, Boston Gas' affiliate is certainly motivated to make such a statement. Although AllEnergy directs this comment to the assignment of city gate contracts now under investigation in *Global Petroleum Complaint*, D.P.U. 96-66, with a nod to *Standards of Conduct Rulemaking*, D.P.U. 96-44, we disagree with AllEnergy's broad statement in terms of modifications to Boston Gas' existing standards of conduct. As stated in detail in our Initial Brief, although we commend Boston Gas for voluntarily implementing its own standards of conduct, M.D.P.U. 943, those voluntary standards are not sufficiently detailed to govern whether a particular actions falls within or outside of prescribed activity.

This is particularly troublesome given the fact that the market place is most vulnerable to the dangers of LDC/affiliate abuses during the critical initial stages of an open market. Marketers, including AllEnergy, likely have already begun marketing campaigns or contacted individual customers in order to serve customers for this heating season . However, adequate standards of conduct governing Boston Gas' relationship with it s affiliate are not ***now*** in place during this critical period as Boston Gas' market prepares to open up to competition. For example, *Global Petroleum Complaint*, D.P.U. 96-66 raises serious questions whether Boston Gas has violated its own voluntary standards and whether its existing standards are sufficient to prevent abuses -- abuses which could cripple a developing marketplace. Although the investigation in *Standards of Conduct Rulemaking*, D.P.U. 96-44 is on-going, more defined standards of conduct for Boston Gas are needed now during this critical period as part of D.P.U. 96-50 in order to achieve an even playing field at the outset of the opening of Boston Gas' market while those rules are finalized. What good will the standards of conduct rules be should Boston Gas' affiliate gain undue preference, proprietary customer lists, or substantial ill-gotten market share under Boston Gas' existing standards during the critical opening stages of the market?

Given this, The Marketer Group renews its request that the Department make certain necessary and crucial changes to Boston Gas' standards of conduct at this time as part of this case to govern the critical upcoming period. As fully described in our Initial comments, it is critical to the success of Boston Gas' unbundling program to enhance its existing standards of conduct now in terms of such things as: (I) a comprehensive definition of Transportation Service; (ii) the sharing of employees; (iii) the contemporaneous posting of customer information and discounts; (iv) the prohibition of joint sales calls or promotional materials; (v) the addition of record keeping and reporting requirements; and (vi) a more expansive delineation of circumstances of potential inappropriate Boston Gas/affiliate dealings. We detail these changes in our Initial Brief, page 21 and Attachment A.

The Attorney General's Suggested "Customer Protections"

In its initial brief, the Attorney General suggests that marketers (I) must be required to provide a $1,000,000 "failure to deliver" performance bond, reachable by customers, as a condition of doing business behind the city gate and (ii) must have boiler plate language in their contracts with Boston Gas indicating that they will comply with existing state and federal laws and regulations. Initial Brief of the Attorney General at 94-96. The Attorney General's goals of consumer protections are laudable; participants in The Marketer Group have fully supported consumer protection measures in other jurisdictions and in the Commonwealth, including LDC/affiliate standards of conduct, education campaigns, reasonable credit-worthiness standards and failure to deliver penalties. However, the Attorney General's proposals here are at best inappropriate and redundant.

As stated in our Initial Brief, The Marketer Group supports reasonable credit-worthiness standards because they help maintain the perceived and actual integrity of the gas marketer industry and the transportation programs themselves. However, as with letters of credit or security deposits, a $1,000,000 bond merely adds unnecessary and substantial cost for marketers attempting to serve customers -- costs that the customers will ultimately shoulder. Boston Gas' proposed "failure to deliver" and balancing penalty regime, reasonable credit-worthiness requirements and, as described below, existing consumer protection laws, are more than sufficient to protect customers from, what the Attorney General describes as "unscrupulous" marketers.

Moreover, although security deposits are used in some pilot unbundling programs, such a bonding requirement, especially in the amount proposed, is not standards industry practice. Such a bonding requirement acts as a substantial barrier to entry for third-party suppliers hoping to compete for Boston Gas' transportation customers. If the bonding requirement does not instantly render third party supplies uneconomic, thus driving the suppliers from Boston Gas' market, it will, at a very minimum, favor the very large marketer over the smaller marketer, each "scrupulous" and having the ability to meet credit requirements and pay any penalties, thus reducing market variety in terms of market participants and available services. This result is contrary to the whole point of providing Boston Gas' customers with unbundled services.

Again, in the important interest of consumer protection, the Attorney General suggests that marketers agree "as a condition precedent and continuing obligation, to comply with all applicable state and federal consumer protection and truth in advertising statutes and regulations", listing examples of these laws and regulations. In our Initial Brief, page 34, we addressed this type of issue in terms of Boston Gas' *Requirements of Service — Supplier Standards (GTRS, § 2.1)* provision (Boston Gas' attempt to reserve itself the right to create standards to be applied to marketers). As stated there, ***this much must be said: marketers are not regulated entities***. As we explained at length in our Initial Brief, Marketers do not come under the Department's regulatory authority and do not have monopoly characteristics warranting regulation by the Department. As with Boston Gas' Supplier Standards, the Attorney General's proposal should be viewed as an attempt to have the Department support the back-door regulation of marketers for a consumer protection goal -- the right goal but the wrong vehicle.

In our Initial Brief, we also noted that, if the attempt to regulate marketers is intended to serve the goal of consumer protection, then we suggest that Boston Gas, the Department, and marketers focus on customer information and education as an effective method to ensure this goal. This is an area where the Department can rightfully and effectively exercise authority. We also noted that existing laws and rules provide a broad range of consumer protections, including reasonable credit-worthiness tests, balancing and failure to deliver penalties, and existing corporations law registration requirements with customer recourse to general civil and consumer protections laws and penalties. The Attorney General cites many of these same provisions in its proposed marketer/LDC contract language. The Marketer Group sees no reason for the Department to take the inappropriate action of tacitly approving of the regulation of marketers when the protections the Attorney General seeks to be included in the marketer's contract with Boston Gas already exist on the books. In fact, the Attorney General proves our point -- substantial consumer protections at the federal and state level already exist -- protections for transportation customers that are likely broader and more potent than those now protecting LDC sales customers. Again, although we agree with the Attorney General in terms of the importance of consumer education and protection, we respectfully request that its proposals described above be rejected.

December 1, 1996 Start Date

A few parties in their briefs have stated that Boston Gas' proposal to open its commercial and industrial (C&I) markets on December 1, 1996, should be delayed until April of 1997 and the 1998 heating season. As stated in our Initial Brief, there is no reason to delay C&I or residential access to unbundled services; Boston Gas' customers have waited too long for access to competitive gas supply and the cost savings and service benefits that accrue from Customer choice. We support Boston Gas' C&I schedule (and a November 1997 residential start date) and renew the comments made in our Initial Brief, page 46, concerning the C&I schedule and residential roundtable process. To those comments we add that the Department should not pass up the chance to allow customers, marketers, Boston Gas, the Department, and other interested parties to learn from the likely steady, if not slow, progression toward customer conversions that will occur in December and the upcoming heating season. Often, the best educator is experience and sufficient safeguards exist to protect consumers. Moreover, we renew our suggestion that Boston Gas and other stakeholders develop a consensual, Department approved, Customer information pamphlet outlining the rights and obligations of the various players (*e.g.*, Boston Gas, marketers, and state agencies) in an unbundled market, available for distribution by all those players. *See* TMG Exh. 45.

Daily Balancing Charges

As previously stated, we agree with a "no harm no foul" approach regarding daily balancing charges and TEC's argument that no daily balancing penalties should be imposed unless the supplier has caused Boston Gas to incur penalties on the serving pipeline or other peaking service-related costs; these penalties should be applicable only after the supplier has had an opportunity to trade imbalances. *See* Initial Brief of TEC at 17. This is a fair approach given the existence of monthly penalties and charges and cost causation principles.

The Balancing Charge Is Already Too High

In its initial brief, Distrigas suggests that the General Transportation Service (GTS) Balancing Charge should be *increased* from $0.2649/MMBtu to $0.3441/MMBtu, not calculated on a seasonal basis, arguing that Boston Gas' Balancing Charge does not reflect the full cost of providing GTS balancing service. Initial Brief of Distrigas at 8. Distrigas argues that Boston Gas must maintain sufficient capacity and supply resources to provide for the differential between the actual sendout on any day and the aggregated DCQ under even the "most extreme circumstances", citing Boston Gas' design day. In additions to the reasons stated below, Distrigas' argument for higher balancing charges should be dismissed for what it is: an attempt to make its own service more price competitive with Boston Gas' balancing service.

As stated previously, Boston Gas' Balancing Charge as proposed is excessive and not fully tied to the cost of the actual facilities used to provide the service; Distrigas' proposal would only magnify this problem. What Boston Gas neglects, and what Distrigas ignores, is that peaking and swing services will not only be provided by Boston Gas' LNG or propane assets -- arguably the most costly peaking facilities -- but also to some extent by less expensive upstream storage and other flexible no-notice service. Thus, Boston Gas' existing Balancing Charge represents a premium service with an exorbitant fee for the full use of certain expensive facilities while failing to include in the calculation that cheaper facilities may be used in their place. From this perspective, then, Distrigas' proposal to increase the Balancing Charge must be rejected outright. The Department should also be wary of and closely scrutinize such a proposal, given that Distrigas could end up, given its local assets and ability to obviate the upstream pipelines for delivery, as the "only game in town" providing optional balancing services. An unreasonably high Balancing Charge would simply force more customers to optional balancing services, rather than giving them real choices among a variety of services.

Conclusion

The Marketer Group praises the hard work of Boston Gas and expertise of other parties to this case. Working together and with the modifications described herein and in our Initial Brief, Boston Gas' program may well become a model program for the Commonwealth and other jurisdictions, allowing customers finally to realize the benefits of a competitive natural gas market. We respectfully request that the Department adopt the recommendations made herein and in our Initial Brief.

Respectfully submitted,

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Service List

I hereby certify that I have this day served the foregoing document upon all parties of record on the official service list compiled by the Chief Clerk in this proceeding.

Dated: October 9, 1996
Washington, D.C.

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